

IN THE MATTER OF: PRI Treatment Trust

Pristine Resources Inc.
129 Bethlehem Road
Revloc, PA 15948

POST-MINING DISCHARGE TREATMENT TRUST AGREEMENT

This Trust Agreement ("Trust" or "Agreement") entered into this 28th day of March, 2006, by and among Pristine Resources Inc. ("PRI"), with its principal place of business at 129 Bethlehem Road Revloc, PA 15948 ("Settlor"), and The Huntington National Bank, with its principal place of business at 917 Euclid Avenue, Suite 200, Cleveland, Ohio 44115 and incorporated under the laws of the State of Delaware ("Trustee").

WHEREAS, the Settlor has entered into a Consent Order and Agreement dated June 10, 2004, (such Consent Order and Agreement, as amended, hereafter referred to as the "CO&A," attached hereto as Exhibit A), with the Commonwealth of Pennsylvania, Department of Environmental Protection (hereinafter referred to as "Department" or "Beneficiary") which is incorporated by reference and which contains, among other things, a requirement that the Settlor provide financial guarantees to assure that funds will be available to provide for the Settlor's legal obligation to operate mine drainage treatment systems to treat and otherwise prevent discharges of mine drainage emanating from or hydrologically connected to Settlor's mines ("Post-Mining Discharges");

WHEREAS, PRI currently operates the following Treatment Systems, hereinafter referred as the "Facilities":

<u>Treatment System</u>	<u>Township</u>	<u>County</u>
Mine #31 Treatment System	Jackson	Cambria
Mine #32 Treatment System	Cambria	Cambria
Mine #33 Pump System	Cambria	Cambria
Mine #33 Wetland System (when activated)	Cambria	Cambria
Mine #38D/Ehrenfeld Treatment System	Croyle	Cambria
Mine #77 Treatment System	East Taylor	Cambria
Mine #78 Treatment System	Paint	Somerset
Fawn #91 Treatment System	Clinton	Butler

WHEREAS, the Surface Mining Conservation and Reclamation Act ("SMCRA"), requires a permittee to post with the Department a bond for each operation conditioned upon the permittee performing all of the requirements of SMCRA, the Clean Streams Law and the Coal Refuse Disposal Control Act, and SMCRA further provides for the bond to be released where all reclamation standards have been satisfied with the exception of consistently meeting mine drainage effluent standards provided the operator has made provisions with the Department for the sound future treatment of the pollutional discharges, 52 P.S. §1396.4(d) and (g);

WHEREAS, the use of a trust fund is authorized as an alternative financial assurance mechanism under provisions of SMCRA which contemplate such a trust is for the public purpose of protecting the environment and the health and welfare of the public, without limitation on duration, and is a means which provides for the sound future treatment of pollutional discharges. 52 P.S. §1396.4(d) and (d.2), 25 Pa. Code §86.158(f);

WHEREAS, the Settlor has elected to establish this Trust pursuant to the CO&A to assure funds are available to provide for Settlor's legal obligation to provide funds for the treatment of the Post-Mining Discharges;

WHEREAS, the Settlor, acting through its duly authorized officers or representatives and with the approval of the Department, has selected the Trustee under this Agreement;

WHEREAS, the Trustee has been induced, and has agreed and is willing to perform the duties as are required to be performed pursuant to this Agreement;

WHEREAS, the Trustee is a national bank or financial institution with trust powers, whose trust activities are examined or regulated by a state or federal agency;

WHEREAS, the Department has joined in this Agreement to indicate its acceptance of the terms and conditions set forth in, as well as the powers and authorities granted by, this Agreement;

WHEREAS, the Department has stated that, to the best of its knowledge and belief, the Facilities currently have and are in compliance with all required federal and state permits and approvals necessary and required for the operation and maintenance of the Facilities; and

WHEREAS, except as set forth in the CO&A, Settlor represents that, to the best of its knowledge, there are no violations of any environmental law regulating the Facilities or the Property, as it is hereinafter defined, and that the Facilities are operating in compliance with all applicable permits and approvals.

NOW THEREFORE, in consideration of the foregoing and of the mutual promises and undertakings of the parties as set forth herein, and with the intention of being legally bound hereby, the parties agree as follows:

ARTICLE ONE

Establishment of Trust

§1.1 The Settlor and the Trustee hereby establish this Trust for the benefit of the Department, or its successor, to be utilized for the primary purpose of addressing environmental obligations related to Settlor's mining activities permitted under SMCRA or the Coal Refuse Disposal Control Act or the Bituminous Mine Subsidence and Land Conservation Act and under the Clean Streams Law which includes providing for the continued operation and maintenance of the Facilities. For purposes of this Agreement, operation includes, but is not limited to, the operation, maintenance and replacement of the currently existing and functioning treatment facilities approved by the Department and any other facilities which may be required in the future.

§1.2 The Settlor and the Trustee intend for the Department to be legal beneficiary of this Trust and to have all rights of a beneficiary under the law, as well as all rights granted under this Trust Agreement. The Department, as beneficiary, shall have access to the Trust as provided herein.

§1.3 The Trust principal, excluding any surety bonds held for the benefit of the Trust as hereinafter provided, shall consist of:

- (a) The deposit of the entire contents of Settlor's Escrow Account (as defined in Paragraph J and provided in Section 8.a of the CO&A) by Settlor.
- (b) Certain easements and rights of access to real property necessary for the continued operation and/or improvement of the Facilities, including buildings, structures, fixtures, and appurtenances described in the deed(s) or legal

description(s) (attached as Exhibit "B") (the "Property") or which may be conveyed to or acquired by the Trust in the future.

- (c) A perfected first lien security interest under the Uniform Commercial Code as in effect in the Commonwealth of Pennsylvania in the personal property described in Exhibit "C" and, in the event that the Department properly exercises its right to order PRI to convey personal property to the Trust pursuant to a certain First Amendment to the CO&A dated _____ ("First Amendment of CO&A"), the personal property described in Exhibit "C."
- (d) Ongoing payments to be made by the Settlor in the amounts and on the dates specified in Section 8.b of the CO&A and such other payment as may be made from time to time by the Settlor.
- (e) Cash, funds or property transferred from any other person to the Trust and accepted by the Trustee as directed by the Department.
- (f) All investments, reinvestments, assets or proceeds attributable to or derived from the items listed in this subparagraph.

§1.4 All of the preceding payments, proceeds and assets referred to in Section 1.3 hereof shall constitute the Trust principal. The Trust principal, together with all earnings, accretions and profits therefrom, less any payments or distributions made by the Trustee pursuant to the terms of this Trust Agreement, shall constitute the Trust Fund.

§1.5 The Trustee shall establish within the Trust Fund two sub-accounts: a sub-account designated as the Primary Trust Account and a sub-account designated as the Capital Improvement Account. The Trustee shall deposit the Trust principal identified in Sections 1.3 and 1.4, above, into the Primary Trust Account. The Trustee shall transfer funds into the Capital

Improvement Account from the Primary Trust Account as directed by the Department and shall deposit into the Capital Improvement Account funds received from any person for deposit into this Account. The Capital Improvement Account principal may be commingled with the principal of the Primary Trust Account for purposes of investment, but must be accounted for and reported separately as if they are assets of separate and distinct funds. The Trustee shall manage and make disbursements from the two sub-accounts in accordance with the provisions of ARTICLE TWO, Distribution Payments, and ARTICLE THREE, Trust Management, as set forth in this Trust Agreement.

§1.6 The Trust Fund and any other real and personal property held by the Trustee pursuant to this Trust Agreement, except only for the assets described in Exhibit C, shall not be subject to assignment, alienation, pledge, attachment, garnishment, sequestration, levy or other legal process, either voluntary, involuntary or by operation of law, by, on behalf of, or in respect of the Settlor and shall not be subject or applied to the debts, obligations or liabilities of the Settlor, including, without limitation, any direct action or seizure by any creditor or claimant under any writ or proceeding at law or in equity. Furthermore, the Settlor shall have no legal title to any part of the Trust Fund except for the assets described in Exhibit C, and it is the intention of the parties to this Trust Agreement that Settlor's entry into the Trust shall extinguish and remove all of Settlor's interest in the Trust from Settlor's estate under the Bankruptcy Code or similar laws. Settlor may retain legal title to the assets described in Exhibit C, subject, however, to a perfected first lien security interest under the Uniform Commercial Code in such assets and all accessions thereto, replacements and substitutions therefore, and proceeds thereof (collectively, the "Liened Assets"), in favor of the Trustee, and the exercise of remedies by or on behalf of the Trustee thereunder. The Settlor shall not take, permit, or suffer to allow any action

to subject the Liened Assets or any of them to transfer, conveyance, assignment, alienation, pledge, attachment, garnishment, sequestration, levy or other legal process, either voluntary, involuntary or by operation of law, by, on behalf of, or in respect of the Settlor or any obligee of the Settlor other than the Trustee under this Trust, and Settlor shall not take, permit or suffer to allow any action to subject or apply the Liened Assets or any of them to the debts, obligations or liabilities of the Settlor other than pursuant to this Trust Agreement, including, without limitation, any direct action or seizure by any creditor or claimant under any writ or proceeding at law or in equity.

§1.7 All payments made to the Trust or deposits into the Trust by the Settlor shall be irrevocable once made, and upon delivery thereof, by or on behalf of the Settlor, all interest of the Settlor therein shall cease and terminate, and no part thereof, nor any income therefrom, shall be used for or devoted to purposes other than for the exclusive benefit of the Department and the Trust as provided herein, except solely for the Liened Assets, subject to the conditions and limitations described in Section 1.6 hereof.

§1.8 The Trust Fund shall be held, administered, invested and reinvested by the Trustee, IN TRUST, as hereinafter provided, and all distributions therefrom shall be made in accordance with the provisions of this Trust Agreement.

§1.9 Any monetary payments made by the Settlor or on its behalf to the Trustee for deposit into the Trust shall consist of cash, bank checks, bank wire transfers or other negotiable instruments acceptable to the Trustee. The Trustee shall have no responsibility for the amount or adequacy of such payment or collection thereof, but the Trustee shall notify the Department of any deficiencies in the payments required to be made by the Settlor or on its behalf whenever the Trustee has knowledge of such deficiencies.

ARTICLE TWO

Distribution Payments

§2.1 The Trustee shall make distribution payments from the Trust upon the written order of the Department and the Department shall designate the sub-account from which such disbursement payment shall be made. The Department shall have the authority to designate, in writing, any person or entity to receive distribution payments from the Trust. The Trustee shall, upon receipt of written order for distribution payment from the Department, make distribution payments from the Trust as directed in the Department's written order. The Trustee shall be fully protected and entitled to rely upon the written orders of the Department and shall not be liable to any party for acting in accordance with those directions.

§2.2 The Trustee is authorized and shall, upon the written order of the Department, enter into contracts, and take title to easements, rights of way and other property interests and property, and to exercise remedies with respect to the Liened Assets, as necessary to carry out the purposes of the Trust. The Trustee is authorized, upon the written order of the Department, to contract with or otherwise engage the services of, and pay reasonable compensation to, such persons or entities as the Trustee may require to carry out this provision. This authorization is in addition to the other powers granted to the Trustee by this Trust Agreement with regard to the retention and compensation of agents. Any property acquired or services provided under this provision shall not be deemed to be acquired or provided to the Trustee or the Department, but shall be deemed to be acquired or provided on behalf of the Trust, and the Trustee shall not incur any liability under the Trust when acting in accordance with the provisions of this paragraph.

§2.3 Except as provided by this Trust Agreement, no other disposition of monies shall be made unless directed, in writing, by the Department.

ARTICLE THREE

Trust Management

§3.1 The Trustee shall invest and reinvest the principal and income of the Trust and keep the Trust invested as a single fund, without distinction between principal and income. The Trustee shall add to principal any income not distributed pursuant to the provisions of this Agreement.

§3.2 The Trustee shall discharge its investment duty solely in the interest of the Department as beneficiary of this Trust and, subject to section 3.3(j), the Trustee shall seek to manage the Trust with that degree of judgment, skill and care under the circumstances then prevailing, which persons of prudence, discretion and intelligence, who are familiar with such matters, exercise in the management of their own affairs.

§3.3 For purposes of investing or reinvesting the assets in the Trust, the Trustee shall have investment discretion subject to the following guidelines:

- (a) The Trustee shall invest and reinvest the assets in the Trust in accordance with: (i) the written instructions of the Settlor and with the guidelines set forth in paragraphs (b) – (j) of this Section, or (ii) in the absence of such written instructions from the Settlor, in accordance with the written instructions of the Department and with the guidelines set forth in paragraphs (b) – (j) of this Section.
- (b) The Trustee may purchase shares of any mutual funds or “money market funds” which have their assets invested in equity shares, including any mutual fund for

which the Trustee or any affiliate may be an advisor, subadvisor, manager, custodian or Trustee.

- (c) The Trustee may purchase any equity shares, listed on a national or regional stock exchange or that are capable of being valued in accordance with any other daily-recognized valuation methodology.
- (d) The Trustee may purchase any bonds listed on a national exchange or that are capable of being valued in accordance with any other daily recognized valuation methodology, including, but not limited to, bonds or obligations of any state or municipality, or that are obligations of or are guaranteed by the United States of America.
- (e) The Trustee may invest in any interest bearing bank account or “money market” account.
- (f) The Trustee may sell at public or private sale any shares acquired under this article.
- (g) In regard to any shares or other equity interests the Trustee may hold, the Trustee may join in any merger, reorganization, voting-trust plan or any other concerted action of owners or shareholders.
- (h) The Trustee, in the exercise of its investment powers, may utilize puts and calls, short sales, options and warrants or other investment strategies generally recognized as prudent when utilized to enhance returns, reduce risk or mitigate loss.
- (i) The Trustee may hold cash awaiting investment or distribution for a reasonable period of time, provided however, where possible and consistent with sound investment practices, shall invest such cash in overnight investments.

- (j) The Trustee shall not be responsible for any losses incurred hereunder whether it is due to market fluctuations or otherwise, except in the case of its gross negligence or willful misconduct or that of its agents.

ARTICLE FOUR

Express Powers of Trustee

§4.1 Without in any way limiting the powers and discretion conferred upon the Trustee by the other provisions of this Trust Agreement or by law, the Trustee is expressly authorized and empowered:

- (a) To make, execute, acknowledge and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the power herein granted.
- (b) To register any securities held in the Trust in its own name or in the name of a nominee and to hold any security in bearer form or book entry, or to combine certificates representing such securities with certificates of the same issue held by the Trustee in other fiduciary capacities, or to deposit or arrange for deposit of such securities in a qualified central depository even though, when so deposited, such securities may be merged and held in bulk in the name of the nominee of such depository with other securities deposited therein by another person, or to deposit or arrange for deposit of any securities issued by the United States Government, or any agency or instrumentality thereof, with a Federal Reserve Bank, but the books and records of the Trustee shall at all times show that all such securities are part of the Trust and that such securities are not co-mingled with or

made a part of any other account of another customer of the Trustee or the Trustee itself.

- (c) To deposit any cash in the Trust in interest-bearing accounts maintained by the Trustee, to the extent such are insured by an agency of the Federal or State Government or otherwise secured as provided under the laws of the Commonwealth of Pennsylvania.
- (d) To hold title to certain interests in real and personal property and security interests in personal property as described in Section 1.3(b) and (c) above and to generally exercise all rights and privileges appurtenant to any property interests held by the Trust as may be necessary to preserve, protect, maintain, operate, transfer, convey or sell *such* property interests, including specifically, but without limitation, to exercise all rights and remedies provided to a holder of a security interest under the Uniform Commercial Code and other applicable law, and to execute and deliver any and all instruments which may be necessary or expedient in any powers granted under this Trust Agreement. However, the Trustee shall not have the power to assign, transfer, convey or sell the property described in Exhibits "B" and "C" without written authorization from the Department.
- (e) To purchase public liability insurance and fire insurance, when directed to do so by the Department, to cover the operation, maintenance, improvement and all other activities associated with the real and personal property held by the Trust. The Trustee and the Commonwealth of Pennsylvania shall be listed on the policy as additional insureds. The insurance shall be written on an occurrence basis and shall provide bodily injury and property damage

coverage in the amounts of \$250,000 per person and \$1,000,000 per occurrence.

The fire insurance shall be in the amount determined by the Department.

ARTICLE FIVE

Advice of Counsel

§5.1 The Trustee may, from time to time, consult with counsel of its own choosing with respect to any question arising as to the construction or interpretation of this Agreement or any action to be taken hereunder. The Trustee shall be protected, to the extent permitted by law, in acting in good faith on the advice of counsel.

§5.2 The Trustee shall not be required to furnish any bond or security in any jurisdiction.

§5.3 No person dealing with the Trust or the Trustee shall be obligated to inquire as to the authority of the Trustee in connection with the acquisitions, investment, management or disposition of the Trust assets or in connection with the exercise of any other power granted under this Agreement.

§5.4 Upon written instructions from the Department, the Trustee shall retain from time to time special outside counsel whose duties shall be as described in this section. Such special outside counsel shall be selected by the Department and consented to by the Settlor, such consent not to be unreasonably withheld or delayed and which shall be deemed to be granted if no objection is made within fifteen (15) days after notice of such selection is given to the Settlor as provided herein.

The Department may at any time in its discretion direct the Trustee to discharge such special counsel. The duties of such special counsel shall include, but not be limited to, (i)

drafting all documents related to the establishment, perfection and maintenance of the lien security interest conveyed by the Settlor to the Trust in the personal property described in Section 1.3(c) and Exhibit "C" hereof, and (ii) advising the Trustee and the Department on an ongoing basis regarding the uninterrupted maintenance and perfection of said first lien security interest.

The Settlor shall pay special outside counsel's fees and expenses, limited to an amount not to exceed five thousand dollars (\$5,000) in any calendar year, within thirty (30) days after presentation to the Settlor of an invoice therefore. If Settlor shall fail to make such payment within the time described, the Trustee or the Department may make such payment, at which time such payment shall constitute an obligation upon the Settlor to the same extent as if it were set forth in the CO&A.

ARTICLE SIX

Claims

§6.1 The Trustee shall not initiate, terminate, settle, compromise or otherwise adjust claims in favor of or against the Trust without the written consent of the Department.

§6.2 The Trustee shall give prompt written notice to the Department and the Settlor of each claim in favor of or against the Trust, specifying the amount and nature of such claim. The Trustee shall also give prompt written notice to the Department and the Settlor of any controversies, demands, actions, losses, damages, costs or expenses or any other matter which the Trustee believes is likely to give rise to a claim.

§6.3 The Department, after consulting with the Settlor, shall have the right, but not the duty to: (1) direct the Trustee to initiate, terminate, settle, compromise or otherwise adjust claims in favor of or against the Trust, and (2) participate in the prosecution of or defense against, any claim in favor of or against the Trust. To the extent the Department directs the Trustee to assume prosecution or defense, the Trustee shall retain counsel of the Department's choosing or counsel selected by the Trustee and approved by the Department. If the Department directs the Trustee to assume prosecution or defense of any claim, the Trustee shall prosecute or defend the claim at the expense of the Trust, and the Trustee shall be entitled to assess against the Trust Fund all costs associated with the prosecution or defense. Upon notice to the Trustee that the Department will assume prosecution or defense, the Trustee will not be responsible for the subsequent prosecution or defense nor for any loss ensuing therefrom.

§ 6.4 If the Department fails to instruct the Trustee with respect to the prosecution or defense of any claim, the Settlor, after consulting with the Department, shall have the right, but not the duty to: (1) direct the Trustee to initiate, terminate, settle, compromise or otherwise adjust claims in favor of or against the Trust, and (2) participate in the prosecution of or defense against, any claim in favor of or against the Trust. To the extent the Settlor directs the Trustee to assume prosecution or defense, the Trustee shall retain counsel of the Settlor's choosing or counsel selected by the Trustee and approved by the Settlor. If the Settlor directs the Trustee to assume prosecution or defense of any claim, the Trustee shall prosecute or defend the claim at the expense of the Trust, and the Trustee shall be entitled to assess against the Trust Fund all costs associated with the prosecution or defense. Upon notice to the Trustee that the Settlor will assume prosecution or defense, the Trustee will not be responsible for the subsequent prosecution or defense nor for any loss ensuing therefrom.

§ 6.5 If neither the Department nor the Settlor instructs the Trustee with respect to the prosecution or defense of any claim, the Trustee may prosecute or defend any claim at the expense of the Trust, but shall be under no duty to do so, and shall have no liability for its failure or refusal to prosecute or defend the claim if the Trustee deems such action to be in the best interest of the Trust.

ARTICLE SEVEN

Evaluation and Reports

§7.1 The Trustee shall at least quarterly furnish to the Department and to the Settlor a statement providing an accounting of all transactions involving the Trust and confirming the value of the Trust. Such statement shall value Trust investments at market value, which shall be that market value, determined not more than thirty (30) days prior to the date of statement. Should the Settlor cease to exist or have its surety bonds forfeited, the Trustee is to discontinue providing any such statement to Settlor.

§7.2 The Trustee shall be responsible for the keeping of all appropriate books and records relating to the receipt and disbursement of all monies and assets under this Trust Agreement. In addition, whenever called upon to do so, the Trustee shall exhibit to the Settlor, should the Settlor be in existence, and the Department all documents, instruments or reports relating to the Trust or the Trust Fund. The Trustee shall also cause to be prepared all income tax returns required to be filed with respect to the Trust and shall execute and file such returns. The Department, upon request, shall furnish the Trustee with such information as may be reasonably required in connection with the preparation of such income tax returns.

ARTICLE EIGHT

Expenses, Taxes and Trustee Compensation

§8.1 Compensation of the Trustee and all other reasonable and customary expenses incurred by the Trustee, including fees for legal services rendered to the Trustee, shall be taken and paid from the Trust at the time that the Trustee shall deem appropriate. Trustee shall be paid a fee, semi-annually in advance, based on the schedule of fees attached hereto and marked Exhibit "D.". The Trustee must provide the Department and the Settlor written notice of any proposed future changes of the Trustee's schedule of fees. The Department and the Settlor have thirty (30) days after receipt of the proposed changes to approve or disapprove the proposed changes to the Trustee's schedule of fees.

§8.2 The Trust is intended to be categorized, for federal income tax purposes, as a grantor trust in accordance with and under the provisions of United States Treasury Regulation Section 301.7701-4(e)(1), (2), (3) and (4) and any implementing regulations cited therein or any corresponding successor provision. All federal taxes of any kind that may be assessed or levied against or in respect of the Trust shall be paid by the Settlor and shall not be taken from the Trust. The Trustee shall enter into such Agreements with the Settlor as are necessary to carry out this provision.

- (a) Should it be determined this Trust is taxable for federal income tax purposes and the Settlor fails, refuses or is unable to pay these taxes, the Settlor and Trustee agree the Department shall have the right to appeal the decision to the appropriate authority. Should the Department not prevail on appeal or should federal law change such that the Trust becomes taxable for federal income tax purposes, then the Department shall have the right, but not the duty, to petition the appropriate

judicial forum to reform the Trust to be a federal charitable trust or to take other measures to meet the requirements of federal law such that the Trust would not be taxable for federal income tax purposes. If the Department elects not to exercise its right to petition to reform the Trust or to take measures to meet the requirements of federal law for the Trust to become tax exempt, then the Trustee is empowered with the right to petition the appropriate judicial forum to reform the Trust to be a federal charitable trust for federal income tax purposes. Notwithstanding any provision of this subsection (a) to the contrary, the Trust may not be reformed such that the purposes and objectives of the Trust cannot be met or that would alter any of the rights, obligations and duties of the Settlor as are provided in this Trust Agreement and in the CO&A between the Department and the Settlor.

§8.3 The Trust is intended to be categorized, for state income tax purposes, as a Pennsylvania charitable trust.

- (a) Should it be determined this Trust is not a charitable trust or Pennsylvania law changes so this Trust becomes taxable for Pennsylvania income tax purposes, then Settlor agrees that Settlor will contribute to the Trustee the amount of the Pennsylvania income tax assessed or levied against or in respect of the Trust. The Trustee shall use the money contributed by the Settlor to pay the income tax assessed or levied against or in respect of the Trust. The money to pay the tax assessed or levied against the Trust shall not be taken from the Trust. The Trustee shall enter into such agreements with the Settlor as are necessary to carry out this provision.

(b) If, at any time, it is determined by a taxing authority with jurisdiction in the matter that this Trust is not a Pennsylvania charitable trust, the Settlor and the Trustee agree the Department shall have the right to appeal the decision to the appropriate authority. Should the Department not prevail on appeal or should Pennsylvania law change such that the Trust becomes taxable for Pennsylvania income tax purposes, then the Department shall have the right, but not the duty, to petition the appropriate judicial forum to reform the Trust to be a Pennsylvania charitable trust or to meet the requirements of Pennsylvania law such that the Trust would not be taxable for Pennsylvania income tax purposes. If the Department elects not to exercise its right to petition to reform the Trust, then the Trustee is empowered with the right to petition the appropriate judicial forum to reform the Trust to be a Pennsylvania charitable trust for Pennsylvania income tax purposes. Notwithstanding any provision of this subsection (b) to the contrary, the Trust may not be reformed such that the purpose and objectives of the Trust cannot be met or that would alter any of the rights, obligations and duties of the Settlor as are provided in this Trust Agreement and in the CO&A between the Department and the Settlor.

§8.4 If at any time that the Trust itself shall become liable for any taxes, and if the Settlor shall fail, refuse or be unable to pay these taxes from its own funds, then the Trustee shall pay from the Trust Fund all such taxes then due and owing. As soon as possible after the happening of the Settlor failing, refusing or becoming unable to pay such taxes, except to the extent that the Settlor disputes the payment of such taxes in good faith, the Trustee and the Department shall negotiate and enter into an Agreement in respect of Trustee's payment of the

taxes during the continuance of this Agreement. Further, unless the Department and the Trustee otherwise agree to the contrary, immediately upon the happening of the Settlor's failure, refusal or inability to pay any such taxes, the Trustee is directed and empowered (notwithstanding any provision of this Agreement to the contrary) to change the investment objective of the Trust to an objective which minimizes the tax liability of the Trust, giving due consideration to market conditions so as to avoid, to the extent possible, losses on the conversion of existing instruments. In carrying out this investment objective, the Trustee shall invest in the following:

- (a) Any bonds or obligations of any state or municipality that are exempt from federal income tax.
- (b) Shares of any mutual fund or "money market fund" which has one hundred percent (100%) of its assets invested in the investments of the type described in the preceding subsection (a).
- (c) Such other investments as may be approved by the Department.

ARTICLE NINE

Successor Trustee

§9.1 The Trustee may resign or the Settlor may replace the Trustee at Settlor's discretion, which discretion is limited to replacement with an entity acceptable to both Settlor and the Department. Any such action, however, shall only be effective by the Settlor after giving sixty (60) days notice to the Department. The Trustee's resignation or replacement shall not be effective until a successor trustee has been appointed and such appointment confirmed, in writing, by the Department, which confirmation will not be unreasonably withheld. The successor trustee shall have the same powers and duties as those conferred upon the Trustee

hereunder and shall be subject to the same reservations, limitations, terms and conditions. The successor trustee shall specify the date on which it will assume administration of the Trust, in writing, sent to the Trustee and the Department, by certified mail, return receipt requested, not less than ten (10) days before such assumption takes effect. Upon the successor trustee's acceptance of the appointment, the Trustee hereunder shall assign, transfer, convey and pay-over to the successor trustee the funds and properties then constituting the Trust and shall provide the Department and successor trustee a full accounting of all transactions involving the Trust which occurred after the last quarterly statement provided in accordance with Article Seven and shall be discharged from any further liability or responsibility with regard to the administration of the Trust.

§9.2 The Department may replace the Trustee at the Department's discretion with an entity acceptable to both the Settlor and the Department. Any such action, however, shall only be effective by the Department after giving sixty (60) days notice to the Settlor. The Trustee's replacement shall not be effective until a successor trustee has been appointed and such appointment confirmed, in writing, by the Department. The successor trustee shall have the same powers and duties as those conferred upon the Trustee hereunder and shall be subject to the same reservations, limitations, terms and conditions. The successor trustee shall specify the date on which it will assume administration of the Trust, in writing, sent to the Trustee, the Department and the Settlor, by certified mail, return receipt request, not less than ten (10) days before such assumption takes effect. Upon the successor trustee's acceptance of the appointment, the Trustee hereunder shall assign, transfer, convey and pay over to the successor trustee the funds and properties then constituting the Trust and shall provide the Department, the Settlor, and successor trustee a full accounting of all transactions involving the Trust which

occurred after the last quarterly statement provided in accordance with Article Seven and shall be discharged from any further liability or responsibility with regard to the administration of the Trust.

ARTICLE TEN

Instructions to the Trustee

§10.1 All orders, requests and instructions by the Department to the Trustee shall be in writing, signed by such persons as are designated in Schedule A, attached as Exhibit "E," or such other persons as the Department may designate by amendment, in writing, to Schedule A. The Trustee shall be fully protected and shall not be liable to any party in acting in accordance with the Department's orders, requests and instructions when authorized by the Agreement, and, to the extent necessary, shall be held harmless from the Trust fund. The Trustee shall not have the right to assume, in the absence of written notice to the contrary, that an event constituting a change or termination of the authority of any person to act on behalf of the Department hereunder has occurred. The Trustee, upon receipt of orders, requests or instructions by the Department which are signed by a person purporting to be designated by the Department, but not listed on the attached Schedule A or any amendment thereto, shall with due diligence ascertain if such persons are designated by the Department and have authority to act on behalf of the Department hereunder.

§10.2 In the event that the Trustee is unsure of the application of any provision of this Agreement or any action contemplated hereunder, the Trustee may request and rely upon the written instruction of the Department. The Trustee shall not be liable to any party for any

affirmative action taken or omission made by the Trustee pursuant to written instruction given to the Trustee by the Department.

ARTICLE ELEVEN

Trustee Exculpation

§11.1 The Trustee shall not be responsible for the enforcement or policing of any environmental action nor be required to defend any claims relating thereto. The Trustee shall be a mere title holder and “fiduciary” as defined in the Pennsylvania Act entitled: “The Economic Development Agency, Fiduciary and Lender Environmental Liability Protection Act,” Act No. 3 of 1995, P.L. 33, 35 P.S. §§6027.1 through 6027.14, and its liability shall be limited as provided under Section 6 of the Act, 35 P.S. §6027.6.

§11.2 As to all actions taken by the Trustee with respect to the administration of the Trust, the Trustee shall not be answerable or liable for the exercise or nonexercise of any discretion or power under this Agreement nor for anything whatever in connection with the Trust hereunder, except for its own gross negligence or willful misconduct or that of its agents. Except in the case of the Trustee’s own gross negligence or willful misconduct, the Trustee shall be entitled to be exonerated and indemnified from the Trust Fund against any and all losses, claims, costs, expenses and liabilities arising out of or in connection with the administration or distribution of the Trust Fund or the affairs of the Trust. In addition to the foregoing, as specified previously, the Trustee shall not be liable to any party for actions taken in accordance with the directions of the Department. The provisions of this section shall also extend to the employees and agents of the Trustee.

ARTICLE TWELVE

Irrevocability and Termination

§12.1 The Trust shall be irrevocable and, except as provide in §16.5 of ARTICLE SIXTEEN hereof, shall continue from the date of inception, unless otherwise terminated by the occurrence of any one of the following:

- (a) The Department determines that the Trust is no longer required.
- (b) The Trustee determines that the size of the Trust does not warrant the continuation of the Trust.
- (c) The Trustee determines administration of the Trust renders it impractical to continue the Trust and the Department agrees.
- (d) Upon termination of the Trust, the Trustee shall distribute any residuum, less final trust administration expenses of the Trustee, to the Department, unless directed otherwise, in writing, by the Department.

ARTICLE THIRTEEN

Amendments

§13.1 This Trust Agreement may be amended by an instrument in writing, executed by the Settlor or Trustee and the Department or by the Trustee and the Department in the event the Settlor ceases to exist, but during the existence of the Settlor any amendment of this Trust Agreement cannot in any manner affect the irrevocable nature of the Trust.

ARTICLE FOURTEEN

Notices

§14.1 All notices, inquiries, directions or other written communications made or given pursuant to the Trust shall be given to the Department, Trustee, and Settlor by certified mail, return receipt requested, addressed to the following addresses, and shall be deemed to be received upon the earlier of the date of signed receipt of the certified mailing or seven (7) days following the date of mailing:

Department: Donald R. Barnes or successor
District Mining Manager
Cambria District Mining Office
286 Industrial Park Road
Ebensburg, PA 15931-4119
Phone: (814) 472-1900
Facsimile: (814) 472-1898

with a copy to:

Michael Terretti or successor
Director, District Mining Operations
Department of Environmental Protection
Greensburg District Mining Office
Armbrust Professional Center
8205 Route 819
Greensburg, PA 15601
Phone: (724) 925-5500
Facsimile: (724) 925-5557

Trustee: Gregory W. Klucher, Esq.
The Huntington National Bank
917 Euclid Avenue, Suite 200
Cleveland, Ohio 44115
Phone: (216) 515-6532
Facsimile: (216) 515-6633

Settlor:

Pristine Resources Inc.
3020 Interstate Drive
Richfield, Ohio 44286
Attn: General Manager of Operations
Phone: (330) 659-9100
Facsimile: (330) 659-9132

with a copy to:

Dale E. Papajcik, Esquire
Squire, Sanders & Dempsey L.L.P.
4900 Key Tower
127 Public Square
Cleveland, OH 44114-1304
Phone: (216) 479-8479
Facsimile: (216) 479-8776

§14.2 Any change in the above addresses shall be made by giving notice to all parties to the Trust.

ARTICLE FIFTEEN

Interpretation

§15.1 As used in this Agreement, words in the singular include the plural, and words in the plural include the singular. Words used in this Agreement shall be given their plain and ordinary meaning, except that, words used in a financial or investment context that are terms of art shall be given their commonly accepted meaning when used in the context of financial services and investment practices. The headings of each section of this Agreement are for descriptive purposes only and shall not affect the interpretation or legal efficacy of this Agreement.

ARTICLE SIXTEEN

Construction

§16.1 This Agreement shall be constructed and governed in all respects in accordance with the laws of the Commonwealth of Pennsylvania.

§16.2 In case of the merger or consolidation of any corporate Trustee serving hereunder, the resultant company shall become such Trustee's successor without notice to any party.

§16.3 Any provision of this Agreement, which is prohibited or unenforceable in any jurisdiction, shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

§16.4 All covenants and agreements contained herein shall be binding upon and inure to benefit the Department and the Trustee, as well as their successors and assigns. Similarly, any request, notice, direction, consent, waiver or other writing or action, taken by the Department or the Trustee shall bind their successors and assigns.

§16.5 It is the intention of the parties hereto that this Trust remain in existence until terminated in accordance with the provisions of ARTICLE TWELVE hereof and that the Trust be exempt from the application of any rule against perpetuities by reason of the Department's beneficial interest herein because the Trust is authorized by the Pennsylvania Surface Mining Conservation and Reclamation Act which contemplates no limitation on duration, and because the Trust is for the public purpose of assuring funds will be available in the future to ensure the Facilities will continue to be maintained and operated to protect the environment and the health and welfare of the public. However, in the event that it is ever finally determined by a court with jurisdiction in the matter, that the Trust is subject to any such rule, then the Trust shall terminate twenty-one (21) years less one (1) day, after the death of the last descendent of Ambassador Joseph P. Kennedy living on the date of this Trust Agreement, and the Trust Fund shall be distributed to the Department, less final trust administration expenses of the Trustee.

ARTICLE SEVENTEEN

Situs

§17.1 The Trust created by this Agreement shall have a legal situs in Dauphin County, Pennsylvania.

ARTICLE EIGHTEEN

Jurisdiction

§ 18.1 In the event that the Department initiates a legal action against the Trustee, in its capacity as Trustee to this Trust Agreement and in relation to the administration of the Trust, the Trustee waives any objections to the exercise of personal jurisdiction over the Trustee.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their respective officers or representatives duly authorized and their corporate seals to be hereunto affixed and attested as of the date first written above.

ATTEST:

Dale E. Pizzi

ATTEST:

ATTEST:

Approved as to Form:

BY: _____

Name:

Title: [Counsel for Department]

SETTLOR:

BY: Keith A. Nagel

Name: Keith A. Nagel

Title: Director, Environmental Affairs

BY: _____

Name:

Title:

TRUSTEE:

BY: _____

Name:

Title:

BY: _____

Name:

Title:

DEPARTMENT:

BY: _____

Name:

Title:

BY: _____

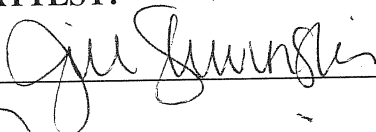
Name:

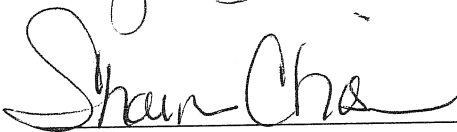
Title:

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ATTEST:

ATTEST:





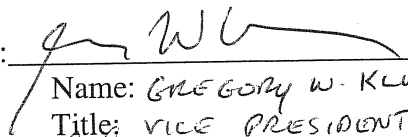
ATTEST:

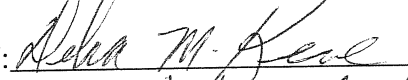
SETTLOR:

BY: _____
Name: _____
Title: _____

BY: _____
Name: _____
Title: _____

TRUSTEE:

BY: 
Name: GREGORY W. KLUCHER
Title: VICE PRESIDENT

BY: 
Name: Debra M. Keene
Title: Assistant Vice President

DEPARTMENT:

BY: _____
Name: _____
Title: _____

BY: _____
Name: _____
Title: _____

Approved as to Form:

BY: _____
Name: _____
Title: [Counsel for Department]

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their respective officers or representatives duly authorized and their corporate seals to be hereunto affixed and attested as of the date first written above.

ATTEST:

ATTEST:

ATTEST:

SETTLOR:

BY: _____
Name:
Title:

BY: _____
Name:
Title:

TRUSTEE:

BY: _____
Name:
Title:

BY: _____
Name:
Title:

DEPARTMENT:

BY: Donald R. Barnes
Name: Donald R. Barnes
Title: District Mining Manager

BY: _____
Name:
Title:

Approved as to Form:

BY: Gail A. Myers
Name:
Title: [Counsel for Department]

LIST OF ATTACHED EXHIBITS

- Exhibit A: June 10, 2004 Consent Order and Agreement
- Exhibit B: Real Property Descriptions
- Exhibit C: Personal Property Descriptions
- Exhibit D: Trustee Schedule of Fees
- Exhibit E: Schedule A (Department Personnel Authorized to Provide Directions to Trustee)